

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 98-0630  
Sales and Use Tax  
For The Tax Periods: 1995, 1996**

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**ISSUES**

**I. Sales/Use Tax – Pagers**

**Authority:** IC 6-2.5-4-6, IC 6-2.5-5-13, IC 6-2.5-1-1, 45 IAC 2.2-4-27, *Information Bulletin #51T*.

The Taxpayer protests the Department's assessment of sales/use tax on the rental of pagers and fees charged for "loss prevention" of pagers.

**II. Sales/Use Tax – Installation Charges**

**Authority:** IC 6-2.5-2-1, IC 6-2.5-1-1.

The Taxpayer protests the Department's assessment of sales/use tax on installation of security systems.

**STATEMENT OF FACTS**

The Taxpayer operates two distinct businesses: (1) a telephone answering service whereby customers' phones which would otherwise go unanswered are answered; (2) a telephonic security system, by which customers' premises are monitored for fire, burglary and other intrusion. More facts supplied as necessary.

**I. Sales/Use Tax: Pagers**

**DISCUSSION**

Taxpayer was assessed sales tax on the rental of pagers and fees charged the customer for “loss prevention” of pagers. The Taxpayer argues that they never give up ownership or control of the pagers and that the Taxpayer is charging their customers sales tax for the airtime on the use of the pagers. IC 6-2.5-4-6 states:

- (a) As used in this section “telecommunication services” means the transmission of messages or information by or using wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities...
- (b) A person is a retail merchant making a retail transaction when the person:
  - (1) furnishes or sells an intrastate telecommunication service; and
  - (2) receives gross retail income from billings or statements rendered to customers.

Also, IC 6-2-5-5-13 states: “Transactions involving tangible personal property are exempt from the state gross retail tax if: ...(2) the person acquiring the property furnishes or sells intrastate telecommunication service in a retail transaction described in IC 6-2.5-4-6.” To demonstrate that the tangible personal property is transferred with respect to the telecommunication service, it must be part of a unitary transaction. A unitary transaction is defined as a transaction that includes the transfer of tangible personal property and the provision of services for a single charge pursuant to a single agreement or order. IC 6-2.5-1-1. *Information Bulletin #51T* clarifies this with the following hypothetical:

Company F is a paging services provider. Company F is not a public utility. The paging service is telecommunication service and subject to sales tax. Company F provides its customers with a pager as part of the service. If there is a single charge for the service, then only that portion attributable to air time is subject to sales tax. The portion attributable to the providing of the pager itself is exempt. If Company F charges separately for air time and rents the pager, then both charges will be subject to sales tax. The difference being that providing only tangible personal property is exempt. In the latter case, the pager is rented not provided.

Here, Taxpayer’s invoices show that the pager lease is separately listed from the pager air time. Consequently, Taxpayer is not providing the pager as part of the service, but rather, separately renting the pager. The gross receipts from renting or leasing of tangible personal property are taxable. 45 IAC 2.2-4-27(a). Therefore, the pagers and the fees for “loss prevention” of the pagers are taxable.

**FINDING**

The Taxpayer's protest is respectfully denied.

**II. Sales/Use Tax – Installation Charges**

Taxpayer was assessed sales tax on the installation charges made on sales of alarm equipment. Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. Also, services may be subject to sales tax if they are part of a unitary transaction. A unitary transaction is defined as a transaction that includes the transfer of tangible personal property and the provision of services for a single charge pursuant to a single agreement or order. IC 6-2.5-1-1. Here, the Taxpayer listed the installation charges separately on their invoices as well as the charges involved for the installation. Therefore, the installation fee is not subject to sales tax.

**FINDING**

Taxpayer's protest is sustained.